



The Telecommunications Association

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October 14, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Request for Leave to File Reply Comments One Day Late
In CC Docket No. 94-54

Dear Mr. Caton:

Pursuant to Section 1.415 of the Commission's Rules, attached are an original and four copies of UTC's Reply Comments in CC Docket No. 94-54. Due to an administrative oversight these Reply Comments were not filed yesterday. Accordingly, UTC requests leave to file these Reply Comments one day late.

Should any questions arise concerning this matter, please communicate with the undersigned.

Cordially yours,


Sean A. Stokes
Senior Staff Attorney

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Equal Access and Interconnection)	CC Docket No. 94-54
Obligations Pertaining to)	RM-8012
Commercial Mobile Radio Services)	

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the Commission's Rules, UTC^{1/} hereby submits its reply comments with respect to the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI), in CC Docket No. 94-54, FCC 94-145, released July 1, 1994, in the above captioned matter.^{2/}

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines. Approximately 2,000 companies are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers to small, rural electric cooperatives and water districts serving only a few thousand customers.

^{1/} UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

^{2/} The Commission extended the deadline for the filing of comments and reply comments in this proceeding by Order, DA 94-877, released August 11, 1994. These reply comments are accompanied by a motion to accept comments filed one day late.

All utilities and pipelines depend upon reliable and secure communications facilities in carrying out their public service obligations. In order to meet these communications requirements, utilities and pipelines operate extensive telecommunications networks. While the predominate use of these networks is for private, internal use, a growing number of utilities are offering reserve communications capacity on a commercial basis -- as competitive access providers and as commercial mobile radio service (CMRS) providers. The entrance of utilities into the telecommunications arena is being actively encouraged by the Administration and Congress as a method to promote the rapid and competitive development of a national information infrastructure (NII). Accordingly, UTC is pleased to offer these reply comments on the Commission's proposed equal access and interconnection requirements for CMRS.

I. Equal Access Obligations Should Not Be Extended To All CMRS Providers

In the NPRM the FCC raises the issue of whether it should extend the equal access obligations currently imposed on wireline cellular licensees affiliated with Regional Bell Operating Companies (RBOCs) to CMRS providers, and if so, to which ones, and to what extent.

UTC agrees with the majority of commenters that equal access obligations should not be extended to non-wireline, non-RBOC

affiliated cellular carriers, much less other categories of CMRS.^{3/} As CTIA and Comcast note, the RBOC equal access obligations were developed to respond to a specific problem -- eliminating anticompetitive activities in the interexchange market resulting from RBOC control of bottleneck facilities. This underlying public policy rationale for the imposition of equal access obligations does not exist for non-RBOC affiliated CMRS providers, since they do not have bottleneck facilities from which they can leverage competitive advantages.^{4/}

The limited support for imposing equal access obligations on all CMRS providers comes largely from the RBOC-affiliated cellular carriers that are currently subject to these obligations. Their primary argument appears to be that it is unfair to impose these obligations on some CMRS providers and not others -- the "two wrongs makes a right" argument. As noted above, what this argument ignores is that non-RBOC affiliated CMRS providers do not have control over bottleneck facilities. In any event, even if this form of logic is accepted, it would not make sense to extend it beyond cellular service providers

^{3/} Comments of American Mobile Telecommunications Association (AMTA); Cellular Telecommunications Industry Association (CTIA); Comcast Corporation; National Association of Business and Educational Radio (NABER); Nextel, The Southern Company (Southern).

^{4/} CTIA, p.5; Comcast, p. 23; and Nextel, p. 6.

since other forms of CMRS (e.g., SMR) do not in any way have comparable market power to cellular. In addition, newer CMRS services such as ESMR are not sufficiently developed (or in the case of PCS, even sufficiently understood) to make a sound public policy decision at this time.

The broad imposition of equal access obligations on all CMRS providers could actually stifle the development of competitive wireless services. A number of commenters note that the imposition of equal access obligations on all CMRS providers would impose additional and often unnecessary expenses on CMRS providers that could impact their ability to offer competitive services.^{5/} The Commission itself expresses this concern stating:

We recognize that the imposition of equal access obligations when the service provider does not possess market power may not be in the public interest. Such action can have unintended consequences which could detract from or undermine the potential benefits of imposing equal access. For example, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition.^{6/}

As Southern notes, the FCC should not impose such burdens and

^{5/} AMTA, p. 8; NABER, p. 6; Nextel, p. 7; PCIA, p. 8; Southern, p. 9.

^{6/} NPRM, at para. 34.

disruptions on current and planned CMRS systems merely for the sake of creating the appearance of regulatory parity.^{7/}

Finally, it should be noted that the imposition of equal access obligations will frustrate the efforts of CMRS carriers to offer integrated systems that provide competitive local wireless and long distance services. Such arrangements are predicated on the ability to enter into large volume discounts and arrangements with specific interexchange carriers, and therefore mandated equal access to all long distance carriers would effectively undermine any incentive to enter into such arrangements. This is of particular concern to utilities and other emerging infrastructure providers that have begun to enter into innovative partnerships with long distance carriers and new wireless service providers, in an effort to introduce facilities-based competition into the local loop.

II. The FCC Should Not Require Local Exchange Carriers To Tariff Interconnection With CMRS

The Commission requests input on the most appropriate method to administer the Communications Act requirement that local exchange carriers offer interconnection to CMRS providers.^{8/}

^{7/} Southern, p. 8.

^{8/} As the NPRM notes at para. 106, LECs are also under an obligation to provide interconnection to all private mobile radio service licensees unless they can demonstrate that a denial is
(continued...)

Specifically, the FCC seeks comment on whether the current system of good faith negotiations should be retained or, alternatively, whether to require LECs to tariff their interconnection terms.

UTC agrees with AMTA that tariffs have insufficient flexibility to accommodate the rapid marketplace changes of the wireless marketplace.^{9/} Tariffs would necessarily impose unwanted transactional costs and service delays. Moreover, as PCIA points out, tariffing suggests a "one-size-fits-all" approach to interconnection that is inappropriate for CMRS given the wide range of current and anticipated wireless service offerings.^{10/}

UTC believes that the best method to ensure that the LECs carry out their interconnection obligations on a non-discriminatory basis, while at the same time preserving flexibility and minimizing regulatory burdens, is to require LECs to make the rates and relevant terms of any previously entered carrier-to-carrier interconnection agreements available upon request to third parties seeking interconnection.

^{8/} (...continued)
not a violation of Sections 201(a), 201(b) and 202(a), of the Communications Act.

^{9/} AMTA, p. 13.

^{10/} PCIA, p. 11.

III. It Is Premature To Propose Rules Concerning CMRS-To-CMRS Interconnection

The FCC seeks comment on whether it should develop rules requiring CMRS-to-CMRS interconnection. UTC agrees with a number of other commenters that CMRS-to-CMRS interconnection obligations would impose unwarranted burdens that could stifle the development of competitive service providers. Moreover, there is no countervailing public interest benefit in mandating such obligations since CMRS providers do not control access to bottleneck facilities. Finally, as noted by AMTA, interconnection requirements are aimed at ensuring access to the public switched telephone network (PSTN), and therefore since by definition all CMRS systems are interconnected to the PSTN, there is no need to mandate interconnection between CMRS providers.

IV. Conclusion

Equal access obligations should not be extended to all CMRS providers since non-RBOC affiliated CMRS providers lack control over bottleneck facilities and therefore are incapable of abusing market power. Moreover, the operational and financial burdens associated with the imposition of equal access requirements would act to impede the development of a competitive CMRS marketplace. Finally, equal access obligations would frustrate the efforts of utilities and other new entrants to offer integrated systems that provide facilities based competitive local loop service.

The FCC should not require LECs to tariff their interconnection arrangements with CMRS. Such a requirement would impose significant transactional costs and would not allow for the flexibility that a competitive CMRS marketplace demands. Similarly, CMRS-to-CMRS interconnection obligations should not be adopted as they would impose unwarranted burdens on CMRS providers that could stifle the development of competitive services.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully requests the Commission to take action consistent with the views expressed herein.

Respectfully submitted,

UTC, The Telecommunications
Association

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